(3)

CH/05/

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

WRIT PETITION NO. 3431/03

PETITIONER : Smt. Lata Devi,
D/o. Shri Rup Das, 30 years,
Sarpanch, Gram Panchayat Tilsara,
Teh. Bilha, Distt. Bilaspur (C.G.).

P.R. No. 3256/03
Presented by Shri Reena Kesharwani
dated 16.10.03

V E R S U S

RESPONDENTS : 1) State of Chhattisgarh,
Through : The Secretary
Panchayat & Social Welfare,
D.K.S. Building, Raipur (C.G.).

2) The Additional Collector,
Bilaspur (Chhattisgarh).

3) The Sub Divisional Officer,
Bilaspur (Chhattisgarh).

4) The Chief Executive Officer,
Janpad Panchayat, Bilha,
Distt. Bilaspur (Chhattisgarh).

पथ आयुक्त
15/10/03

RECEIVED COPY
16/X/03
Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA

S.B.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P. NO. 3431/2003 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	06/02/2004 Shri Praful Bharat, counsel for the petitioner. Shri Sanjay K. Agarwal, Deputy Advocate General for the respondents/State. Petitioner who is a Sarpanch of Gram Panchayat Tilsara, Tehsil, Bilha, District, Bilaspur, has preferred this writ petition under Article 226/227 of the Constitution of India, has questioned the legality, correctness and propriety of the order (Annexure P/5) dated 09/12/2002 passed by respondent no.3 – Sub Divisional Officer, Bilaspur. Brief facts leading to filing of this petition are that the petitioner was an elected Sarpanch of Gram Panchayat Tilsara, Tehsil Bilha, Dist. Bilaspur. A complaint was made against the petitioner that she had incurred expenses without any resolution of Panchayat over and above the sanctioned amount. Respondent no.3, Sub Divisional Officer, after registering the case instituted an enquiry and called for the enquiry report from the Tehsildar and after receipt of the enquiry report, he issued notice to the petitioner. The petitioner appeared before the respondent no.3, submitted her reply to the show cause notice on 27/11/2002 the evidence of the both parties was recorded and the matter was fixed for orders on 07/12/2002. Against this order, the petitioner herein preferred a revision before the Additional Collector raising the points that without giving an opportunity of hearing to the petitioner the respondent no.3 had fixed the matter for orders. The learned Additional Collector passed an order (Annexure P/2) on	

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

03/12/2002 staying the further proceedings pending before the respondent no.3 – Sub Divisional Officer. On 07/12/2002 petitioner moved an application before the respondent no.3 (Annexure P/3) mentioning therein that further proceedings in the matter has been stayed by the Additional Collector and on that day the respondent no.3 took this application on record and fixed the matter for orders on 09/12/2002 without passing any order on the application of the petitioner. On 09/12/2002 in spite of the stay order passed by the Additional Collector, the learned Sub Divisional Officer in violation of the stay order passed the impugned order. Therefore, the petitioner has moved this petition for quashment of the order dated 09/12/2002 on the ground that same has been passed contrary to the stay granted by the revisional Court i.e., Additional Collector and without giving an opportunity of hearing to the petitioner.

I have heard learned counsel for the parties.

Learned counsel for the petitioner submits that in spite of the stay granted in favour of the petitioner and without giving an opportunity of hearing to the petitioner, respondent no.3 passed the impugned order removing the petitioner from the post of Sarpanch on the ground of misconduct.

On the other hand, learned counsel for the State opposed the argument and supported the order of respondent no.3.

Perusal of order dated 27/11/2002 (Annexure P/1) of the proceedings before respondent no.3 reveals that on that day the evidence of both the parties was recorded and the matter was fixed

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

for orders on 07/12/2002 and the perusal of order dated 03/12/2002 (Annexure P/2) reveals that in Panchayat Revision No.13/2002-2003, Additional Collector, Bilaspur in the last para, stayed the operation of the order dated 27/11/2002 passed by the Sub Divisional Officer – respondent no.3. Perusal of the order dated 07/12/2002 (Annexure P/3) reveals that the petitioner moved an application before the respondent no.3 – Sub Divisional Officer mentioning therein that the stay has been granted by the Additional Collector, Bilaspur in the matter, therefore, the hearing may be adjourned and on that day i.e., 07/12/2002 the Sub Divisional Officer – respondent no.3 took the application on record, but had not passed any order. However, he fixed the matter for orders on 09/12/2002 and on that day he passed the impugned order. The order impugned has been passed in spite of stay granted by the Revisional Court in utter violation of the order of the Revisional Court and the allegation of the petitioner is that even she was not given an opportunity of hearing.

In view of the above points raised and perusal of the record, I am of the opinion that the impugned order *per se* is illegal and the Sub Divisional Officer ought to have rescued himself from passing the impugned order as the stay was granted by the Revisional Court and even the proceeding dated 07/11/2002 reveals that no opportunity of hearing was given to the petitioner. Perusal of the order dated 27/11/2002 (Annexure P/1) reveals that after recording the evidence of both the parties, the matter was fixed for orders. Therefore, in view of the above, the impugned order

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -04-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

cannot be sustained and the same is liable to be set aside. Accordingly, the impugned order dated 09/12/2002 is set aside and the respondent no.3 – Sub Divisional Officer is directed to restore the case on its original number and pass the orders in accordance with law after giving an opportunity of hearing to both the parties.

With the aforesaid observations and directions, this writ petition stands disposed of. Consequently, M.W.P.no.3123/2003 also stands disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C.BHADOO
Judge